

DISTRICT COURT BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302		DATE FILED: March 24, 2021 4:05 PM FILING ID: 99DA292855673 CASE NUMBER: 2021CR497
PEOPLE OF THE STATE OF COLORADO v. AHMAD AL ALIWI ALISSA Defendant	COURT USE ONLY	
Michael T. Dougherty, District Attorney Adam Kendall, Chief Trial Deputy District Attorney 1777 Sixth Street Boulder, CO 80302 Phone Number: (303)441-3700 FAX Number: (303)441-4703 E-mail: akendall@bouldercounty.org Atty. Reg. #38905		Case No. 21CR497 Div:13
People's Motion to Reconsider March 23, 2021 Order Regarding [Defendant's] Motion for Protective Order (D-006)		

On March 23, 2021, Ahmad Al Aliwi Alissa (the “Defendant”) filed his Motion for Protective Order, requesting that the Court enter an order that “the Office of the District Attorney” and “any other law enforcement persons . . . get consent of [Defendant’s] counsel . . . before attempting to contact or interview [Defendant]” and give counsel an opportunity “to be present PRIOR to any contact with [Defendant.]” *See* [Defendant’s] Motion for Protective Order (D-006)(the “Motion”), p. 1. (emphasis added). Without receiving a response from the People, the Court granted the Motion. The People request that the Court reconsider its March 23, 2021 Order granting the Motion.

The protective order granted by the Court is unnecessary and overbroad. Specifically, (1) it ignores the bounds of Defendant’s Constitutional right to counsel, (2) it ignores privileges and legal protections already in place to protect Defendant, (3) the granted protective order could interfere with urgent, unrelated law enforcement investigations and other necessary functions; and (4) the relief requested is not ripe for consideration by this Court.

First, Defendant invoked his right to counsel, and the Public Defender's Office was appointed to represent him on March 23, 2021. Therefore, Defendant has the right to have counsel present at all critical stages of the prosecution of this case, to include interrogation related to the charges in the matter. *People v. Vickery*, 229 P.3d 278, 280 (Colo. 2010) (citing *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991)). Additionally, as the Motion correctly states, Colo. R.P.C. 4.2 requires that the People contact Defendant's counsel prior to discussing the above captioned case with him.

Absent a waiver of Defendant's right to counsel, the People (to include any agent employed by or acting on behalf of a law enforcement entity) will not interrogate Defendant with regard to the charges pending in the above captioned case.¹

Notably, the analysis with regard to discussions or interviews with Defendant on matters unrelated to the above captioned case is different. Defendant's right to counsel on unrelated matters or investigations is not subject to Colo. R.P.C. 4.2. Regardless, any statement made by Defendant on an unrelated matter would be protected, and subject to scrutiny and exclusion in any subsequent case, as outlined in *Miranda v. Arizona*, 384 U.S. 436 (1966). Thus, the protective order granted by this Court is superfluous.

Additionally, the protective order granted by this Court could severely hamper law enforcement's ability to investigate future crimes unrelated to the above captioned case. For instance, if Defendant becomes a witness to or victim of a crime while detained, the protective order granted by this Court could impact law enforcement's ability to properly investigate a matter wholly unrelated to the above captioned case. Perhaps the most troubling aspect of the protective order is that if Defendant were to suffer a serious health issue, jail staff would be prohibited from speaking with him or to provide medical care until his attorneys provided consent for the contact and were

¹ While the People do not anticipate Defendant waiving his right to counsel at any point, the right of a defendant to have counsel present during an interrogation is waivable. *Vickery*, 229 P.3d at 280; *see also* Colo. R.P.C. 4.2.

given an opportunity to be present. Similar difficulties would arise if Defendant were to make an urgent request of jail staff. Likewise, if Defendant needs to relay that he is in imminent danger, staff would be prohibited from speaking with him about his concerns until contacting his legal counsel in this case. Such realistic scenarios not only impact the jail's ability to maintain institutional safety, but also may impede the ability of staff to determine if an individual detainee (Defendant included) may be in need of medical, or other, assistance.

Finally, and most significantly, Defendant did not request the protective order pursuant to any statutory or rule-based authority. Defendant has not alleged that any law enforcement entity has failed to respect Defendant's constitutional rights or statutory privileges. Without an indication that the People or law enforcement have violated Defendant's rights, the order proposed by the Defendant is not yet ripe for the Court's consideration. *See Jessee v. Farmers Ins. Exch.*, 147 P.3d 56, 59 (Colo. 2006) (stating that "[t]he doctrine of ripeness requires 'an actual case or controversy between the parties that is sufficiently immediate and real so as to warrant adjudication.'" (quoting *Beauprez v. Avalos*, 42 P.3d 642, 648 (Colo. 2002))). The Court may not consider uncertain or contingent future matters because the injury is speculative and may never occur. *Jessee, supra* (citing *Stell v. Boulder Cnty. Dep't of Soc. Servs.*, 92 P.3d 910, 914 (Colo. 2004)). Defendant is requesting the Court prohibit a potential, undefined harm which has yet to occur. The Court may not provide advisory opinions to litigants. *See Crow v. Penrose-St. Francis Healthcare Sys.*, 169 P.3d 158, 164 (Colo. 2007) (citing *Bd. of Cnty. Comm'rs v. Cnty. Rd. Users Ass'n*, 11 P.3d 432, 439 (Colo. 2000) ("Because courts generally cannot issue advisory opinions, a court will not hear a case that is not ripe.")).

WHEREFORE, the People request that the Court reconsider its March 23, 2021 Order regarding the Motion and deny Defendant's request.

Respectfully submitted,

MICHAEL T. DOUGHERTY
DISTRICT ATTORNEY

By:
s/Adam D. Kendall
Adam D. Kendall
March 24, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing served via the Colorado e-filing system on March 24, 2021, and addressed as follows:

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